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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/472,088	12/23/1999	N.S. RAMESH	D-30030-01	8299

28236 7590 05/28/2002

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EXAMINER

VO, HAI

ART UNIT	PAPER NUMBER
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1771

12

DATE MAILED: 05/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

FD-12

Office Action Summary	Application No. 09/472,088	Applicant(s) RAMESH, N.S.	
	Examiner Hai Vo	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hurley et al (US 5,938,878). Regarding claims 1-8, it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Hurley discloses a laminated structure having core material laminated to the first foam layer on one surface and to a second foam layer on a second surface of core (figure 2). The core material of Hurley is analogous to a coating as claimed by the present application. Hurley teaches the laminate wherein the foam layer or core material can be a polymer selected from the group consisting of low density polyethylene, polypropylene and ethylene-propylene rubber (column 9, lines 20-45). Hurley teaches the core having a thickness of about 1/8 to 3/8 inch (3.2 to 9.5 mm) (column 7, line 66). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have altered the thickness range of the core since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges

involves only routine skill in the art. *In re Aller*, 105 USPQ 233. It would have been obvious to the skilled artisan to have optimized the thickness range of the core motivated by the desire to provide the improved adhesion between the core and the foam layer. Hurley is silent as to a bond strength of a laminated structure. However, since the laminated structure of Hurley is structurally the same, and made of the same materials as the presently claimed composite. It is the examiner's position that the bond strength within the range as required by the claims would be inherently present in the laminate of Hurley.

With regard to claim 6, Hurley discloses the core is substantially solventless (column 7, lines 9-12).

With regard to claims 7, 8 and 18, Hurley discloses the foam layer having the density of 4 pounds per cubic foot (column 15, line 20).

With regard to claim 20, Hurley discloses polymer structure is used for athletic gear (abstract).

With regard to claim 21, Hurley discloses each of the first foam layer and the second foam layer having a thickness between about 1/32 and 1/2 inch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have altered the thickness range of each foam layer since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. It would have been obvious to the skilled artisan

to have optimized the thickness range of each foam layer motivated by the desire to provide the improved adhesion between the core and the foam layer.

Response to Arguments

3. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.
4. The argument that no preference stated of significant attributed to the selection of ethylene-propylene rubber among all of the other suitable polymer as the coating of the laminated structure is not found persuasive because so long as ethylene-propylene rubber is listed to be one of materials of the core (column 9, line 25), Hurley reads on the claim limitations. Applicant argues that due to the nature of "the coating", the component structure has to be relatively thin to sufficiently bond the two different layers together and the thickness of the coating ranging from about 1 to 6 mils. The thickness of the core in Hurley ranging from 3 to 9 mils overlaps that of the claimed coating (column 9, line 66). It is the examiner's position that altering the range of thickness is recognized within the level of an ordinary skill in the art. Since the core of Hurley meets all the limitations of structure and chemistry as the coating of present invention, the claims are obvious over Hurley. The examiner wishes to point out that the determination of patentability is based on the final product but not the claim language itself, i.e., "the core" or "the coating".


Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on Monday to Friday, 8:30 to 5:00 (EAST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (703) 308-1261. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

HV
May 22, 2002


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